

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

January 2004

# What is This?

he Utah State Office of Education 👢 and Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education have developed this newsletter to keep educators at all levels informed of case law that may affect education in Utah as a whole or provide insight for individual educators regarding professional practices.

Each month, the attorneys for the State Office and UPPAC, Carol Lear and Jean Hill, will analyze court cases from across the nation and summarize

those of interest to Utah educators.

The UPPAC Case of the Month will focus on examples of educator misconduct that may lead to discipline action against a license.

The Recent Education Cases feature will spotlight decisions on issues such as personal liability for educators, students' rights, or No Child Left Behind.

The Eye on Legislation will provide updates on legislation proposed by the Utah Legislature or Congress.

Ms. Lear and Ms. Hill will also answer educator questions and offer practical tips for avoiding legal pitfalls or complying with new or existing laws.

And the newsletter will introduce educators to members of the Professional Practices Commission. The Commission consists of nine educators and two community members who meet monthly to discuss individual cases of educator misconduct in Utah and sets standards of professional performance, competence and ethical conduct for licensed educators.

#### **Inside this issue:**

Eye On Legisla- 2 tion

UPPAC cases 2 cont.

Recent Education 3 Cases

UPPAC Member Profile

Your Questions 3



# **UPPAC Case of the Month**

In recent years, the Utah Education Association has argued against UPPAC suspending or revoking an educator's license for conduct it views as unrelated to the educator's job performance.

For example, UEA, through its attorney, has argued that educator's arrested for public lewdness after attempting to seduce an undercover officer in a public park should not have their licenses suspended because the misconduct did not occur on school grounds or at a school function.

The prosecutor for the State Office has argued, successfully, that teachers have a duty to be role models to their students and a teacher who is arrested for violation of a criminal law is unfit to stand before a classroom of adolescents as a model of acceptable behavior.

Courts across the nation support that view.

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#### **UPPAC CASES**

- 38 Case Files opened
- 3 Suspensions/revocations for sexual misconduct
- 4 suspensions/revocations for pornography in the classroom
- 3 suspensions/ revocations for theft or fraud
- 1 revocation for alcohol related misconduct
- 1 suspension for other misconduct with students
- 8 letters of warning or reprimand
- 5 reinstatements

## Eye On Legislation

The 2004 Utah Legislative session is around the corner and bill requests are starting to pour in. While little substantive information is available at this point, bill titles give some indication of the education priorities this year.

There are a number of bills addressing last education omnibus legislation, Senate Bill 154. Rep. Judy Ann Buffmire, D-Murray, proposes repealing the amendments to the education laws while others seek to make more proscribed changes.

Charter schools are on the agenda as well. One bill, it is rumored, may

seek to create a school district solely to govern the charters. Rep. Merlynn Newbold, R-South Jordan has requested a bill titled Insurance and Retirement for Charter School Teachers.

Several other charter-related bills have been requested, but the titles reveal little about the sponsors' intentions.

No Child Left Behind continues to be a source of contention in Utah. Rep. Margaret Dayton, R-Orem, proposes that Utah opt out of the law while Rep. Cory Holdaway, R-Taylorsville, is sponsoring a resolution commending the law. Similarly, there are several competing bill requests related to education funding, including perennial favorite Tuition Tax Credits, and teacher qualifications. Titles such as Teacher Certification Tests, Teacher Qualification Amendments and Master Teacher Provisions leave much to the imagination.

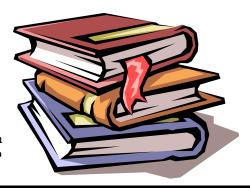
We will provide more information on these and all of the education bills as text becomes available.

The status of education bills, and the positions of education related groups including UEA and USOE, can also be tracked at usoe.k12.ut. us.

#### **Recent Education Cases**

Demers v. Loeminster Sch. Dep't. (D.Mass. 2003). An eighth grade student's free speech rights were not violated when he was suspended for the rest of the year for drawing a picture of explosives surrounding his school and a school official with a gun to his head. The school's response was reasonable given the nature of the drawings and the student's disciplinary history. The school was also justified in requiring that the student submit to

a psychological evaluation in order to return to the school.



Cain v. Tigard-Tualatin Sch. Dist., (D.Ore. 2003). Student and parent could proceed to trial on the question of whether a coach had retaliated against the student for his parent's protected speech.

The parents had complained twice to the school district about the coach's verbal tirades and emo-

(Continued on page 3)

#### **UPPAC** cases

(Continued from page 1)

v. Bond, the Kansas Supreme Court upheld the termination of a teacher who had been convicted of burglary noting that "One of the goals of education is to instill respect for the law, and teachers are expected to serve as role models for their students."

Courts have similarly upheld terminations or license suspensions for acts outside of school such as a guilty plea related to an arrest for indecent exposure that occurred be-

fore the teacher was hired (C.F.S. v. Mahan), having sex with a student despite a 16-year interval between the relationship and termination of employment (Parker v. Board of Education), drug possession at home (Dubuclet v. Home Ins. Co., Gedney v. Bd. of Ed.), an arson conviction (Newchurch v. Louisiana State Bd.), and resisting arrest and lying under oath (Purvis v. Marion County Sch. Dist.).

Utah teachers have lost their licenses for out of school acts like public lewdness, drug possession, theft, and similar acts that may not have occurred or be known at the school, but certainly call the educator's fitness to teach into question.

UPPAC and UEA agree that an educator should not lose his or her license based on conduct that doesn't relate to the job. UPPAC simply argues that abiding by state law is a part of the educator's job.

A teacher's fitness as a role model will be reviewed if he/she is accused of public intoxication, solicitation, sexual harassment, or other violations of law.

Utah State Office of Education

#### **UPPAC Member Profile**

Myra Lynch, Director of Personnel and Student Services for the Logan School District, comes to the commission with a rich background in education.

She has been a high school English, speech, drama and French teacher, and was a Coordinator and teacher at the Teen Parent Program for Logan and Cache districts. She also attended school in Europe and belongs to several professional education organizations.

As Ms. Lynch states, she is a firm believer "that committed individuals

can make a difference in education."

In support of that belief, Ms. Lynch applied for UPPAC "because I felt it would be a wonderful learning experience and would be helpful in my current position as I work with school employees."



Myra Lynch

Ms. Lynch is serving her second three-year term on the Commission and recently completed one year as the chair of the Commission. Ms. Lynch notes that the decisions the Commission must make regarding educator licenses are "never easy," but emphasizes that "the vast majority of educators do wonderful work; we really deal with a minority . . . ."

When she is not traveling to Salt Lake for Commission meetings and hearings, Ms. Lynch loves to travel, play tennis and read. She is married and has three adult children and two grandsons.

## **Your Questions**

In future editions, Ms. Lear and Ms. Hill will respond to legal questions received from educators that may be of interest to a broader audience. Questions may be emailed to jhill@usoe.k12.ut.us, mailed to USOE, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84114-4200, or called in to Jean Hill at (801) 538-7832 or Carol Lear at (801) 538-7835.

The questions in this edition were raised by school counselors at an in-service presentation.

What do you do when . . . ?

Q: What do you do when a noncustodial parent wants access to his child during the school day to give her a reward for good grades?

A: Unless there is a court order

barring the father from contact with the student, he should be treated just as the teacher/school would treat any other parent. If the school has a policy of not allowing parents to interrupt class time except in emergencies, that rule should be applied to the father. If the school does occasionally let parents meet with their students during the day, the father should be allowed access under whatever guidelines the school uses to determine when it is okay for a parent to

### **Recent Cases Cont.**

(Continued from page 2)

tional abuse of football players. The coach retaliated against the students and his parents by, among other incidences, locking the student in n equipment room while the coach verbally attacked him and encouraging players and their parents to verbally attack the student and his parents.

<u>Doe v. Bd. Of Educ.</u> (2d Cir. 2003). The Board's decision not to reappoint a teacher was upheld. The

teacher, suffering from bipolar dis-



checked herself into a mental health facility after she began to feel depressed

order,

and suicidal. The school found that she had entered student grades in such an erratic manner that the administration questioned the accuracy of the grades. The Board cited this and other instances of incompetence.

The teacher alleged that the Board's decision was based on her disability, and therefore discriminatory. The court held for the Board noting that there was no proof the Board or school was aware of the teacher's bipolar disorder and the Board cited legitimate, non-discriminatory reasons for its decision.

Utah State Office of Education Page 3

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

## Your Questions Cont.

(Continued from page 3)

meet with his child.

Q: Who has the right to enroll a child in school if the parents are unmarried?

A: If the parents are living together and the father is listed on the birth certificate, both parents should be treated as if they are a married couple, i.e., either parent can enroll the student.

If, on the other hand, the couple has separated, the school can designate a custodial parent based on whomever has physical custody

of the student the majority of the time.

If, for example, dad can show that he has the student one day, or even one hour, longer than mom, the district can designate dad as the primary custodian and use his address to establish resi-

dence.

Q: What types of testing protocol violations lead to disciplinary action against a teacher?

A: Violations come in all shapes and sizes.

In the most recent UPPAC cases, allegations of violations included statements from students that the teacher had read questions to them from the test booklet as part of their test preparation or gave answers to test questions during the actual test.

Violations have been found in other jurisdictions where score sheets showed numerous erase marks and correct answers were filled in more completely or neatly that the rest of the score sheet.

Testing cases are relatively new in Utah and the evidence so far has consisted primarily of student statements and statistical anomalies in the scores. Based on the evidence presented, testing protocol violations in Utah so far have either been dismissed or resolved with a letter of warning or reprimand to the teacher about proper procedures.



School's have the discretion to deny parents access to their children during the school day.